

FILED

AUG 11 2005


J. Haas
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

* * * * *

VINCENT C. DONOVAN,

CIV 05-4093

Petitioner,

-vs-

MEMORANDUM OPINION
AND ORDER

ALBERTO GONZALES, U.S. Attorney
Gen; R. MARTINEZ, Warden, FPC
Yankton,

Respondents.

* * * * *

On July 28, 2005, the Court denied Petitioner's application for a writ of habeas corpus under 28 U.S.C. § 2241. (Memorandum Opinion and Order, Doc. 8; Judgment, Doc. 10.) Petitioner thereafter filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e), Doc. 12. The arguments presented by Petitioner in the motion do not alter the Court's view that Petitioner was not prevented from raising, in his first 2255 motion, the issue he seeks to pursue in the present petition and he cannot invoke the safety valve in 28 U.S.C. § 2255. Thus, the Court again concludes Petitioner is prohibited from pursuing the claims asserted in the Petition under 28 U.S.C. § 2241. Accordingly,

IT IS ORDERED that Petitioner's Motion to Alter or Amend Judgment Pursuant to Rule 59(e), Doc. 12, is denied.

Dated this 11th day of August, 2005.

BY THE COURT:



Lawrence L. Piersol

Chief Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Shelly Margulies
(SEAL) DEPUTY